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EDWARD DZIEDZIC

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EXAMINER

WUJCIAK, ALFRED J

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte EDWARD DZIEDZIC

Appeal 2007-3461
Application 09/348,742
Technology Center 3600

Decided: January 30, 2008

Before TERRY J. OWENS, JENNIFER D. BAHR, and
DAVID B. WALKER, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

The Appellant appeals from a rejection of claims 2-6 and 8, which are all of the pending claims.

THE INVENTION

The Appellant claims a stabilizer wire mount for attaching a mounting surface on a pole by attachment bands. Claim 8 is illustrative:

8. A stabilizer wire mount for attachment to a mounting surface on a pole by attachment bands comprising:

a singular base plate having a top surface and a bottom surface, said bottom surface having front and back edges;

an integral boss position substantially centrally on the top surface, and integrally extending substantially upwardly therefrom;

a loop formed integrally in the boss, the loop defining an opening therethrough for the attachment of the stabilizer wire;

at least one upwardly extending raised rib on the top surface at an appropriate distance from the boss, thereby defining a channel between the boss and the at least one raised rib for the seating of an attachment band; and

a pair of depending serrated edges on the bottom surface of the base plate, one of each pair extending downwardly proximate the front and back edges of the bottom surface for the base plate, said depending serrated edges disposed to engage the utility pole upon a tightening of the band.

THE REFERENCE

Aldridge

US 5,098,051

Mar. 24, 1992

THE REJECTION

Claims 2-6 and 8 stand rejected under 35 U.S.C. § 103 as being unpatentable over Aldridge.

OPINION

We reverse the Examiner's rejection and remand the application to the Examiner.

Aldridge discloses shaped extruded brackets to be bound tightly to a

structure such as a utility pole for supporting components such as electrical wire, grounding wire and cable (col. 3, ll. 49-57). In one embodiment the bracket (53) is a single piece having an upwardly projecting central base member 62 (which corresponds to the Appellant's integral boss), two upwardly extending edges (56, 59) (either of which corresponds to the Appellant's at least one upwardly extending raised rib that defines a channel between it and the boss for seating an attachment band) for disposition of a band therein, and elongated triangular-shaped outward projections (unnumbered, figs. 15, 16, 18, 19). Upwardly projecting base member 62 may include "various apertures, as at 63, therethrough so that various fasteners as the bolt 64, may be accommodated for the attachment of other components to the bracket after or during its installation high upon the utility or other pole" (col. 9, ll. 11-15; fig. 18). With respect to the embodiment in figure 13 having two upwardly and outwardly extending base members, Aldridge discloses that those base members can have fasteners through them that hold various components to the utility pole such as a wire guide (51) (which corresponds to the Appellant's loop formed integrally in the boss for attachment of a stabilizing wire) and a clamp (52) (col. 8, ll. 53-59).¹

Claim 8²

¹ Regarding the Appellant's loop (20, 20A) formed integrally with the boss (28), the Appellant's Specification discloses: "It also will be appreciated by those skilled in the art that the mounts 20 and 20A preferably are cast as one piece from lightweight, durable, weather-resistant material such as aluminum. However, the various elements could be manufactured separately and appropriately joined by welding, bolts or the like" (Spec. 6).

² Claim 8 is the sole independent claim.

The Appellant argues that Aldridge's wire guide 51 in figure 13 is not centrally located but, rather, extends off at an angle (Br. 8). Aldridge discloses that the integral, centrally-located base member 62 in figure 15 may accommodate fasteners for attachment of components to the bracket (col. 9, ll. 8-15). That disclosure would have led one of ordinary skill in the art, through no more than ordinary creativity, to fasten to base member 62 components known in the art to be fastened to similar base members for the same purpose. *See KSR Int'l. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007) (In making the obviousness determination one "can take account of the inferences and creative steps that a person of ordinary skill in the art would employ"). One such component is Aldridge's wire guide 51 which is disclosed as a component attached to an upwardly extending, albeit angled, surface 48 of base portion 43 in figure 13 (col. 8, ll. 43-59).

The Appellant argues that Aldridge's extending edges 56-59 in figure 15 extend inwardly, not upwardly (Br. 8). Those edges extend upwardly and then inwardly (fig. 15). The Appellant's claim 8 does not exclude an inwardly-extending rib, provided that it also extends upwardly.

The Appellant argues that Aldridge's protrusions on the back of the base member extend in a direction opposite to that of the Appellant's serrated edges (Br. 8). Considering the side of Aldridge's bracket in figure 15 having base member 62 and extending edges 56-59 to be the top surface, the ridges shown on the opposite side are on the bottom surface as required by the Appellant's claim 8.

The Appellant argues that Aldridge's protrusions on the back of the

base member are simply ridges, not serrations (Br. 8). “Serrate” means “notched or toothed on the edge: specif : having marginal teeth pointing forward or toward the apex <a ~ leaf>.”³ The Appellant’s claim 8 requires “a pair of depending serrated edges on the bottom surface of the base plate, one of each pair extending downwardly proximate the front and back edges of the bottom surface for the base plate”. In view of the Appellant’s figure 5, “one of each pair extending downwardly proximate the front and back edges” appears to mean “one of each pair extending downwardly proximate the front edge, and the other of each pair extending downwardly proximate the back edge”.

The Examiner argues (Ans. 5):

Aldridge shows that the bottom of base plate having [sic, has] a pair of serrated edges located on the front and back edges of the base plate. Figure 15 shows that the serrated edges are located on the edge of the bottom surface and that element 55 is considered as front edge and element 54 is considered as back edge.

The Examiner’s view that Aldridge’s base members 54 and 55 are back and front edges is unreasonable. Those base members, together with third base member 62, correspond to the Appellant’s base plate, and the ridges on each of base members 54 and 55 extend from the front edge to the back edge of the base member (fig. 19). The base members themselves, however, are not edges, let alone front and back edges.

For that reason and because the Examiner has not explained how

³ Webster’s New Collegiate Dictionary 1059 (G. & C. Merriam 1973).

Aldridge would have rendered the Appellant's recited serrated edges *prima facie* obvious to one of ordinary skill in the art, we conclude that the Examiner has not established a *prima facie* case of obviousness of the Appellant's claimed invention.

Regarding claims 2 and 4, separately argued by the Appellant (Br. 9), we note the following.

Claim 2, which depends from claim 8, requires that "the top surface includes a second raised rib positioned an approximate distance from the boss on a side of the boss opposite that of the at least one raised rib thereby defining a channel between the boss and the second raised rib for the seating of an attachment band." The Appellant argues that "Aldridge may show second ribs 57 and 58, extending inwardly, but not from the type of boss as described in claim 8 of this application" (Br. 9). As discussed above, Aldridge discloses the type of boss encompassed by the Appellant's claim 8. Moreover, if Aldridge's extending edge 56 is considered to be the extending edge corresponding to the Appellant's at least one upwardly extending raised rib in claim 8, Aldridge's extending edge 59 corresponds to the second raised rib in claim 2.

Claim 4 depends from claim 2 and requires that "the top surface includes a third raised rib on [the] same side as the at least one raised rib and positioned an appropriate distance from the at least one raised rib thereby defining a channel between the at least one raised rib and the third raised rib for the seating of an attachment band."

The Appellant argues (Br. 9):

Claim 4 defines a third raised rib on each side of the mount, to provide for another channel on each side thereof, for accommodating double bands, on each side of the boss, for thoroughly adhering the boss to a utility pole, generally in the manner as shown in Fig. 11 of the drawings for this current application. This is not shown or described in any manner in Aldridge.

The Appellant's interpretation of claim 4 is incorrect. That claim does not require a third rib on each side of the mount but, rather, requires a third rib on the same side as the at least one raised rib in claim 8. Claim 4 does not require a third rib on the same side of the mount as the second raised rib in claim 2. Nor does claim 4 require thorough adhering of the boss or adhering in the manner shown in figure 11. If Aldridge's extending edge 56 is considered to be the edge corresponding to the Appellant's at least one raised rib, then Aldridge's extended edge 57 corresponds to the Appellant's third raised rib in claim 4.

Remand

We remand the application for the Examiner and the Appellant to address on the record whether each end of Aldridge's unnumbered ribs on base members 54 and 55 is a serrated edge. If so, the two ends of each rib are a pair of serrated edges, one extending downwardly from each of the front and back edges (left and right sides in fig. 19) of the base member as required by the Appellant's claim 8.⁴ We further remand the application for

⁴ Because the projections are on the bottom surface of a bracket to be bound tightly by a band to a pole such as a utility pole (col. 3, ll. 50-52), they appear to be capable of engaging a utility pole upon the tightening of a band as required by the Appellant's claim 8.

Appeal 2007-3461
Application 09/348,742

the Examiner to consider whether additional prior art discloses, or would have rendered obvious to one of ordinary skill in the art, the Appellant's pair of serrated edges.

DECISION

The rejection of claims 2-6 and 8 under 35 U.S.C. § 103 over Aldridge is reversed. The application is remanded to the Examiner.

REVERSED and REMANDED

vsh

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